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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 705

SAM GIANCANA,

Petitioner,

VS.

MARLIN W. JOHNSON, Agent in Charge, Chicago Office of the Federal Bureau of Investigation,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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Sam Giancana, petitioner, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW.

The opinion of the Court of Appeals is reported in 335 F. 2d 366. A copy of the opinion is Appendix "A" to this petition.

JURISDICTION.

The judgment of the Court of Appeals was entered June 30, 1964. On September 28, 1964, Mr. Justice Brennan extended the time to petition for certiorari to and including November 20, 1964. Jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

QUESTIONS PRESENTED.

1. Whether the requisite jurisdictional amount is shown to be in controversy when, absent allegation that more than $10,000 was involved, evidence was submitted to the district court which proved that respondent, an agent of the federal government, deprived petitioner of personal liberties of a magnitude which amounted to physical arrest without warrant or conviction.

2. Whether the Court of Appeals was correct in holding that absence of formal jurisdictional allegations deprived the district court of jurisdiction even though petitioner in his complaint alleged deprivation of personal liberties of vast magnitude, and proved by evidence that the allegations of the complaint were true.

3. Whether deprivation of personal liberties of the magnitude alleged in the complaint and found by the district court to be involved is such as to require exercise of this Court's supervisory powers over federal agents and lower federal courts and grant review by certiorari in this case.

4. Whether the Court of Appeals erred in vacating the judgment of the district court granting preliminary injunction despite undisputed proof that petitioner's personal liberties of the magnitude alleged in the complaint were involved.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Title 28, United States Code, Section 1331:

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

Title 28, United States Code, Section 1343:

"§ 1343. Civil rights and elective franchise.

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * *

"(4) To recover damages or to secure equitable or other relief under any act of congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, § 121, 71 Stat. 637."

Title 28, United States Code, Section 1361:

"§ 1361. Action to compel an officer of the United States to perform his duty.

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. Added Pub. L. 87-748, Sec. 1(a), Oct. 5, 1962, 76 Stat. 744."

Title 5, United States Code, Section 300:

"§ 300. Officials for detection and prosecution of crimes.

"For the detection and prosecution of crimes against the United States and for the acquisition, collection, classification and preservation of identification and other records and their exchange with, and for the official use of, the duly authorized officials of the Federal Government, of States, cities, and other institutions, such exchange to be subject to cancellation if

dissemination is made outside the receiving departments or related agencies, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties. Pub. L. 87-264, Title II, § 201, Sept. 21, 1961, 75 Stat. 551."

Amendment IV—Searches and Seizures.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V—Capital Crimes; Double Jeopardy, Self-Incrimination; Due Process, Just Compensation for Property.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time or War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Federal Rules of Civil Procedure, Rule 8(a):

"(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded."

STATEMENT.

Petitioner, San Giancana, is a citizen of the United States; and since 1954, he has lived with his family in the Village of Oak Park, Illinois. (App. 19, 20, 176, 259).[1] His home, a two-story bungalow, is situated on the northwest corner of South Wenonah and Fillmore Streets in the Village. (App. 20). In order to use his home petitioner, his friends and acquaintances require uninterrupted access and egress to petitioner's residence. (App. 20).

At no time has either petitioner, any member of his family, or anyone else committed any violation of any law at, near petitioner's home, or anywhere else. (App. 21-44). At no time has respondent or any of his agents any reason to believe otherwise. Respondent has never had any search warrant to search or scrutinize petitioner's home or keep it under surveillance, nor has respondent had any grand jury indictment or mittimus for petitioner or for any person in and about petitioner's home. At no time has respondent or any of his agents had any reason to believe that any act in violation of any law was being committed by petitioner or anyone else in and about petitioner's home. (App. 21, 26, 39-41).

Beginning on June 10, 1963, petitioner noticed that in and about his home, over a 24-hour period, there were vehicles as close as 20 to 40 feet to his residence. These

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[1] The record was printed in the court below as an Appendix to the Brief. Therefore, record references are to the printed appendix, thus: (App. ....).

vehicles numbered not less than three and sometimes as many as five. (App. 22). In each of these vehicles were two men. These vehicles were equipped with "Walkie-talkie" radios, with binoculars with which men in the vehicles looked into petitioner's home and with telescopic lens cameras with which the men photographed the interior of petitioner's residence. (App. 22). These vehicles were noticed by a maid employed by petitioner and the men were identified as an "• • • FBI man • • •" and "• • • an agent of the Federal Bureau of Investigation • • •" (App. 40).

Whenever petitioner left his home after June 10, 1963, to go to stores, restaurants, or his golf course, the vehicles near his home followed him. The men in these vehicles stayed close to petitioner, and on occasions spoke to him in a humiliating fashion, loud enough for others to hear, telling him that they would stay close to him and keep him under constant surveillance, so as to interfere with the exercise of his right of personal liberty and privacy. (App. 24).

The identity of the men in the vehicles as agents of the Federal Bureau of Investigation, under the supervision and control of respondent, became known to petitioner because on one occasion petitioner had seen one of these men and recognized him by the name of "Roamer," a man "• • • from the FBI • • •" (App. 260). Two of these men identified themselves as FBI men to a maid employed by petitioner. (App. 40-41). One, the agent named Roamer, introduced himself to a member of petitioner's party at the golf course. (App. 228-230). Later, on another occasion, this agent introduced a Mr. Marshall, saying, "He was an FBI man." (App. 238). On July 10, 1963, and on some 15 or 16 occasions when petitioner was at the golf

course he patronized there were men in and about who identified themselves to the Manager as "* * * federal agents * * *" (App. 47-48; 204-205).

On June 24, 1963, petitioner consulted an attorney who demanded of respondent that "* * * as the agent in charge of the Federal Bureau of Investigation * * *" the men under respondent's command be removed from the vicinity of petitioner's home. (App. 17-18). This telegram was delivered on June 25, 1963, at about 10:52 a.m. (App. 18).

Respondent did not answer petitioner's demand. (App. 17-18). When called as an adverse witness (App. 218), respondent was asked whether he received the telegram (App. 218), and whether, in answer to the telegram, he had called the office of petitioner's attorney and said he would not "* * * remove from the residence of Mr. Sam Giancana the 24-hour surveillance of FBI agents that (he had) placed there * * *." Respondent refused to answer the question. (App. 219-222).

Petitioner filed his complaint seeking only injunctive relief in the district court for violation of rights secured to him by the Fourth and Fifth Amendments to the Constitution of the United States. (App. 8-18; 19-30). A motion for preliminary injunction was filed, supported by affidavits. (App. 36-48).

In his pleading petitioner did allege that any amount of money as being involved, relying that "* * * it is incongruous to hold that a formal allegation of the amount in controversy is necessary when personal liberty of such magnitude alleged in the complaint and found by the district court are involved * * *" (See dissent of Swygert, J, Appendix "A").

Respondent moved to dismiss. (App. 31). No counter affidavits were filed by respondent in response to those in support of the motion for preliminary injunction. (App. 36-48).

Hearing on the motion for preliminary injunction was set by the trial judge. (App. 154). Petitioner, in support of his motion called nine witnesses. (App. 171-277). In addition, petitioner called respondent as an adverse witness (App. 218-225; 277-281); but respondent refused to answer any questions asked of him because of "* * * instructions from the Attorney General of the United States, and pursuant to Departmental Order No. 260-62 * * *." (App. 219).[2]

Respondent offered no evidence, testimonial or otherwise.

At the close of the hearing counsel for the petitioner submitted the matter to the court stating that "* * * we are not dealing here with the proof of the matter on the merits, so that in considering whether or not the preliminary motion should be allowed, I respectfully ask Your Honor to consider also the allegations in the amended complaint, supported by affidavit, and the fact that none of the allegations, nor the evidence submitted to you, has been contradicted or rebutted, or even tested by any question whatsoever from the defendant * * *." (App. 283).

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[2] For refusals to answer questions put to him as an adverse witness under the rules, respondent was adjudged guilty of contempt by the district judge. (App. 54-60). On appeal, the Court of Appeals affirmed the contempt conviction. *Giancana* v. *Johnson*, 7 Cir. 335 F. 2d 372.

On July 16, 1963, the court dismissed the complaint as to one of the defendants, J. Edgar Hoover (App. 284); and denied the motion to dismiss as to respondent. (App. 284). The propriety of this order was not included in the appeal; nor was there a request made in the court of appeals for permission to appeal under 28 U.S.C. 1292(b).

The trial court ruled that the "allegations as uncontradicted and undenied * * *." (App. 284). Findings of Fact and Conclusions of Law were adopted (App. 63-69); and thereafter, the order for preliminary injunction was entered. (App. 53). A broader injunction order tendered by petitioner (App. 78-80) was rejected by the trial judge. (App. 78). Respondent then appealed only from the order granting the preliminary injunction. (App. 74). Petitioner cross-appealed from the denial of the broader injunction order. (App. 78, 78-30; 84).[3]

On review, the Court of Appeals held that the district judge erred in entertaining the suit because having only jurisdiction conferred by Congress, the district court's power was limited, so far as it is based on Section 1331, to controversies involving a sum or value in excess of $10,000. Since plaintiff failed to allege that a sum or value in excess of $10,000 was involved, the district court lacked jurisdiction of the cause. Accordingly, the court held that "* * * since there was no jurisdiction, * * *" the judgment was vacated and cause remanded.

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[3] On petitioner's motion, the cross appeal was later dismissed in the Court of Appeals.

Of the panel of three judges, one, Judge Swygert, dissented, saying:

> "This court holds, however, that the complaint was fatally defective because there was no express allegation that the amount in controversy exceeded $10,000 and that this amount could not be inferred from the facts in the complaint.
>
> "It is incongruous to hold that a formal allegation of the amount in controversy is necessary when personal liberties of the magnitude alleged in the complaint and found by the district court are involved. To require a dollar value to be specifically averred in these circumstances is to exalt form over substance.
>
> "It is my opinion the fact that there was no formal allegation of the requisite jurisdictional amount did not prevent the district court from assuming jurisdiction. The complaint alleged that the defendant and his agents deprived plaintiff of the use of his home that they violated his right of privacy and personal liberty. From these allegations the district court could infer, contrary to what the majority indicates, that the amount in controversy exceeded $10,000. * * *"

REASONS FOR GRANTING THE WRIT.

1. This case presents a revolting example of arbitrary conduct by an agent of the Federal Government. It is conduct that brings to mind all of the historical reasons urged for the adoption of a Bill of Rights to our Constitution. Rutland, Birth of the Bill of Rights, 78-105 (1955); Dumbauld, The Bill of Rights, 10-33 (1957); Hand, The Bill of Rights, 2-5 (1958).

2. The first ten amendments, particularly the Fourth and Fifth, embodied limitations on powers of the Federal Government or its agents, guaranteeing constitutional protections comparable to those in the English Bill of Rights. 1 W. & M., Sess. 2, ch. 2 (1689). In English Constitutional history the Bill of Rights was a milestone which forged a link with the Thirty-Ninth Chapter of Magna Carta. "No free man shall be taken or imprisoned, or disseised, or outlawed, or banished, or in anyways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land." McKechnie, Magna Carta, 375-395 (2d ed. 1914).

Our Constitution and our system of constitutional government reflect a decision that the Federal Government and its agents are limited in powers and methods that may be used. Powers are withheld from government agents or, alternatively stated, freedoms or liberties of the citizen are set forth in order to guarantee that the individual shall be free from arbitrary official interference, except when a rational basis for intrusion exists. Beaney, "The Constitutional Right to Privacy," in 1962 Supreme Court Review 214 (Kurland ed. 1962).

3. This petition presents a unique case involving fundamentals of constitutional liberty. The record discloses that petitioner's constitutional right to be left alone by the government and its agents, his rights to be free from illegal restraint, were desecrated by respondent acting as an agent of the Federal Government. Corwin, Liberty Against Government (1948); Douglas, Right of the People, ch. 2 (1958).

In *Boyd* v. *United States,* 116 U.S. 616, 627-630 this Court referred to Lord Camden's judgment in the historic case of *Entick* v. *Carrington,* 19 Howell's State Trials, 1030 and said:

> "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case there before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employees of the sanctities of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense * * *."

4. Respondent's infringement of petitioner's liberty was not incidental. Respondent placed a cordon of vehicles around petitioner's home, maintained a 24 hour a day electronic vise around petitioner, sustained a constant intrusion into the most intimate of petitioner's privacy by the use of binoculars, long-ranged cameras and incessant surveillance of petitioner which amounted to his arrest without a warrant and incarceration without conviction. (App. 19-39; 39-48).

Without a court order, a charge, accusation or an indictment, respondent used his position as an agent of the Federal Government and administratively without notice decided that petitioner's liberty and freedom were to be restricted through agents under respondent's command. Respondent's agents followed petitioner when he went to public places, intruded on petitioner when he went to the most sacred of all places, his church and to the mausoleum where the remains of his wife were interred. (App. 259-272; 273-277). The invasion of petitioner's privacy, the intrusion by respondent into his liberty and freedom were systematic and calculated to deprive petitioner of his liberty without lawful authority of any kind. When respondent was asked to justify his conduct he refused to do so. The district judge found that respondent "* * * has not shown to the court any reason or justification for the surveillance and the observation of the * * *" petitioner as shown in the record. (App. 67).

5. Contrary to the conclusion of the Court below that petitioner "* * * failed to allege, or otherwise show, * * * facts from which that essential jurisdictional element may be inferred, * * *" (Appendix "A", 8a) the record is replete with uncontroverted evidence showing that petitioner's personal liberty of vast magnitude was involved. Anglo-American law has never placed a monetary value on liberty.

In an action to protect by injunction a right secured by law, it is the value of the right sought to be protected which determines the amount in dispute for jurisdictional purposes. *Bell* v. *Hood*, 327 U.S. 678; *Bell* v. *Hood*, D. Cal., 71 F. Supp. 813; *McNutt* v. *General Motors Acceptance Corporation*, 298 U.S. 178; *Federated Mutual Implement and Hardware Insurance Company* v. *Stein-*

heider, 8 Cir., 268 F. 2d 734, 738; Bunn, Jurisdiction and Practice of the Courts of the United States, 64-65. When the record is viewed in this context, it is clear that petitioner proved the jurisdictional requirement that "* * * the matter in controversy exceeds the sum or value of $10,000. * * *"

Judge Swygert in his dissent from the majority used language which illumines petitioner's position:

> "It is incongruous to hold that a formal allegation of the amount in controversy is necessary when personal liberties of the magnitude alleged in the complaint and found by the district court are involved. To require a dollar value to be specifically averred in these circumstances is to exalt form over substance." (Appendix, "A" 12a).

6. Obviously, the Court of Appeals misconstrued petitioner's case in two fundamental respects:

(a) The court erred in holding that petitioner failed to show that the essential jurisdictional amount was involved. The court overlooked the testimonial evidence of nine witnesses (App. 171-277); the affidavits in support of the motion (App. 36-48); the refusal of respondent to answer proper questions (App. 218-225; 277-281); and petitioner's testimony under oath untested by cross examination (App. 259-275). Thus, petitioner's case presents the amazing picture of every fact he alleged proved by uncontroverted evidence.

(b) The court erred in concluding that under our federal system where fundamental liberties of a citizen are purposefully and intentionally infringed by respondent, an agent of the Federal Government, rote requirement dictates that a price of $10,000 be put on values so sacred and historically so treasured.

7. Procedural, jurisdictional and constitutional questions of vast importance are involved in this case. This court should exercise its supervisory powers over federal agents, *Rea* v. *United States,* 350 U.S. 214; *Wilson* v. *Schnettler,* 365 U.S. 381, and reverse the court below in the exercise of this court's power of review over lower federal courts. *Riverbank Laboratories* v. *Hardwood Products Corporation,* 7 Cir., 220 F. 2d 465, rev'd, 350 U.S. 214, amended 350 U.S. 1012.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM R. MING, JR.,
Counsel for Petitioner.

November 19, 1964